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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/653,664	09/01/2000	Stephen J. Brown	HERO-1-1099	6599
8791	7590 09/22/2004		EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN			CHILCOT, RICHARD E	
12400 WILSI SEVENTH F	HIRE BOULEVARD LOOR	•	ART UNIT	PAPER NUMBER
LOS ANGELES, CA 90025-1030			3627	
			DATE MAILED: 09/22/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Golfsca, 864 BROWN, STEPHEN J.			Application No.	Applicant(s)				
Examiner Richard E, Chiloct, Jr. 3627	•			/				
Richard E. Chilloot, Jr. 3927	1	Office Action Summary						
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions for anny to a validation under the provisions of 3 CFR 1.138(a). In ro word, however, may a right be limitely filed. Extensions of a variety of the period for right specified above is less than lithiny (50) days, a veryly writin the statutory reinfurin of thinty (30) days will be considered timely. If the period for right specified above is less than lithiny (50) days, a veryly writin the statutory reinfurin of thinty (30) (40) (51) (51) (51) (51) (51) (51) (51) (51	1	omee Nederl Cammary						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extractions of time may be available under the provisions of 37 CFR 1.15(6). In no event, however, may a reply be timedy fled - If the period for reply septidal above, the maximum statutory period will apply and will expire SIX (8) MONTHS from the mailing date of this communication for reply septidal sets than three motifies after the maximum statutory period will apply and will expire SIX (8) MONTHS from the mailing date of this communication, even if timely filed, may reduce any septidation and provided by the Office attraction in the first three mailing date of this communication, even if timely filed, may reduce any septidation and provided by the Office attraction is not condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) ○ Claim(s) 12-16 si/are allowed. 6) ○ Claim(s) 12-16 si/are allowed. 6) ○ Claim(s) 12-16 si/are allowed. 6) ○ Claim(s) 12-16 si/are rejected. 7) □ Claim(s) 13-18 re allowed. 8) □ Claim(s) 14-18 real provided to by the Examiner. Application Papers 9) □ The specification is objected to by the Examiner. Application Papers 9) □ The requiring(s) filed on 16/47 requiring the correction is required if the drawing(s) is objected to. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) □ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) □ All b) □ Some * c) □ None of: 1. □ Certified copies of the priority documents have been received. 2. □ Certified copies of the priority documents have been received in Application No		The MAILING DATE of this communication and	l	<u> </u>				
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1)⊠ Responsive to communication(s) filed on <i>Q6 May 2003</i> . 2a)□ This action is FINAL. 2b)⊠ This action is non-final. 3)□ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parfe Quayle</i> , 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4)⊠ Claim(s) 12-16 is/are pending in the application. 4a) Of the above claim(s) is/are allowed. 6)□ Claim(s) 12-16 is/are rejected. 7)□ Claim(s) is/are allowed. 6)□ Claim(s) 12-16 is/are rejected. 7)□ Claim(s) is/are objected to. 8)□ Claim(s) is/are objected to. 8)□ Claim(s) is/are objected to by the Examiner. 10)□ The procification is objected to by the Examiner. 10)□ The drawing(s) filed on is/are: a)□ accepted or b)□ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11)□ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12)□ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a)□ All b)□ Some * c)□ None of: 1.□ Certified copies of the priority documents have been received in Application No 3.□ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received. Attachment(e) 1) ☑ Notice of Draftsperson's Patent Drawing Review (PTO-948) 3)□ Information Discoauer Statent Application (PTO-152)	THE - Exte after - If the - If NO - Failt Any	MAILING DATE OF THIS COMMUNICATION. nsions of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a reply 0 period for reply is specified above, the maximum statutory period w 10 re to reply within the set or extended period for reply will, by statute, 11 reply received by the Office later than three months after the mailing	36(a). In no event, however, may a reply be time within the statutory minimum of thirty (30) days will apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. (D) (35 U.S.C. § 133).				
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Art Unit: 3627

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 12-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,794,214. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application do not include the registering step found in the above referenced application.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brown 6,023,686 and 6,167,386, note other patents to the same inventor as the instant application.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard E. Chilcot, Jr. whose telephone number is 703-305-4716. The examiner can normally be reached on 5/4/9 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richard E. Chilcot, Jr. Primary Examiner Art Unit 3627